IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2022 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SHRI DINESHBHAI.J.SHAH - Appellant(s)
Versus
HEMANT AMRUTLAL PATEL - Defendant(s)

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Appearance :
MR PRANAV M RAVAL for Appellant(s) : 1,
MR SANDIP C SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/06/2007

ORAL JUDGMENT

1. ***Admit***. With the consent of the learned Advocates appearing on behalf of the respective parties, the matter is heard for final hearing.

2. By way of this appeal – the original defendant has challenged the judgment and decree dated 01.02.2007 passed by the Small Cause Court No.3, Ahmedabad below Exhibit Nos. 20 and 25 in Summary Suit No. 3034 of 2004 by which the learned Trial Court has passed a decree of Rs. 40,000/- (Rupees Forty Thousand only) against the appellant – herein with interest at the rate of 6% from the date of the suit till its realization on non-compliance of order while granting leave to defend by which the appellant was directed to deposit Rs.10,000/- (Rupees Ten Thousand only). Considering the facts and circumstances of the case, this Court was of the view that the matter be remanded to the learned Trial Court for deciding the same afresh in accordance with law and on merits on payment of some cost by the appellant.

3. Shri Sandip Shah, learned Advocate appearing on behalf of the respondent herein – original plaintiff submitted that in that case the appellant may be directed to deposit entire amount of Rs.40,000/- (Rupees Forty Thousand only) to show his *bona fide* and that a reasonable cost be awarded to

the respondent, in that case he has no objection if the impugned judgment and decree is set aside and the matter is remanded to the learned Trial Court and the Trial Court is directed to dispose of the suit on merits within a period of 6(six) months from today.

4. Shri Pranav Raval, learned Advocate appearing on behalf of the appellant has submitted on instructions from his client that he has already deposited Rs. 20,000/- (Rupees Twenty Thousand only) pursuant to the order dated 18.04.2007 passed by this Court and so far as the balance amount of Rs.20,000/- (Rupees Twenty Thousand only) is concerned, the appellant may be granted four weeks' time to deposit the same with the Trial Court.

5. In the facts and circumstances of the case and to give an additional opportunity to the appellant to defend the suit on merits and on condition that the appellant shall deposit balance amount of Rs.20,000/- (Rupees Twenty Thousand only) with the Trial Court on or before 13th July, 2007, the impugned judgment and decree passed by the learned Trial Court is hereby quashed and set aside and the

matter is remanded to the learned Trial Court for deciding the same afresh in accordance with law and on merits within a period of 6(six) months from the date of depositing the aforesaid balance amount of Rs.20,000/- (Rupees Twenty Thousand only). If the aforesaid balance amount of Rs. 20,000/- (Rupees Twenty Thousand only) is not deposited by the appellant on or before 13th July, 2007 in that case the decree will stand and it will be open for the original plaintiff to execute the decree. Both the parties are directed to cooperate the learned Trial Court for early disposal of the suit. Registry is directed to transmit amount of Rs.20,000/- (Rupees Twenty Thousand only) deposited by the appellant pursuant to the order dated 18.04.2007 in the Trial Court in Summary Suit No. 3034 of 2004 but not later than 2nd July, 2007. With these, First Appeal is allowed and subject to the above condition the impugned judgment and decree is set aside.

6. The matter is remanded to the learned Trial Court for deciding the Summary Suit No. 3034 of 2004 afresh in accordance with law and on merits. The learned Trial Court is directed to decide and dispose

of the the aforesaid Summary Suit within a period of 6(six) months from 13th July, 2007. The appellant is directed to pay the cost to the respondent which is quantified at Rs. 3500/- (Rupees Three Thousand and Five Hundred only) to be paid directly to the respondent by A/c. Payee Cheque within a period of 10(ten) days from today. The learned Trial Court is directed to invest the entire amount i.e. Rs.40,000/- (Rupees Forty Thousand only) on such deposit in any Nationalized Bank for a period of 6(six) months in the name of Registrar of the Court so that ultimately whoever succeed may be paid that amount with interest. Registry is directed to sent back the Record and Proceedings to the learned Trial Court immediately.

[M.R.Shah, J.]

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